

silent on this point; but there are a few decisions on the question and as these have been referred to by my Lord in his judgment, it is not necessary for me to refer to them again. Of course, the position would be different if a trust had been created by the husband in his will. There is no foundation for the argument put forward in this case that a trust has been created under the will. The chief argument urged in favour of the view that the widow is not entitled to get the properties from the executors is, what will happen if the widow adopts at some later stage? The answer is, if she adopts she will then be deprived of the properties and they will vest in the adopted son. The purpose for which the will has been executed by the husband has not been found to be enforceable. In my opinion the property would, on the refusal of the widow to adopt, vest in her."

From these judgments, with which I entirely agree, and the cases cited therein, it is quite clear that as there is no gift over in the present testator's will, there will be an intestacy with regard to the residue.

Order accordingly.

Solicitors: Sandy G. Pillay; Mitra & Co.; Drew & Napier.

R. v. CHEW CHONG JIN

[A. Cr. J. (Whitton J.) February 7, 1956]

[Singapore — Criminal Appeal No. 194 of 1955]

Control of Imports and Exports Ordinance, 1950, s. 27 — Prohibition of Imports Order, 1950 — Illegal importation of gold — Abetment — Proof of conspiracy.

This was an appeal against the acquittal of the respondent on a charge of abetting a person or persons unnamed in the illegal importation into the Colony of gold, in contravention of paragraph 2(1) of the Prohibition of Imports Order, 1950 read with s. 27 of the Control of Imports and Exports Ordinance, 1950. The facts as adduced by the prosecution were as follows:

On June 17, 1955 a P.A.A. aircraft landed at Kallang Airport at about 4.45 p.m. Some Customs officers kept observation on the plane. After the passengers' baggage and the mail had been cleared some fitters and the accused who was employed by Pan-American Airways were working on the plane. Accused was seen to enter the plane and come out after two or three minutes. He then mounted a bicycle and rode towards a hangar and disappeared. After about three or four minutes he rode back to the aircraft, and again entered the plane. About two minutes afterwards he came out of the plane, mounted the cycle and rode towards the hangar. He was then stopped by the Customs Officers. Accused produced two heavy brown-paper parcels to the Customs Officers. Later the Customs Officers went to the hangar and in a tool box, the key to which was handed to them by the accused, were found four parcels similar in appearance to the two parcels which the accused had handed to the Customs Officers. The parcels were subsequently found to contain gold. At the time the accused was stopped he had on him a white waistcoat with a number of pockets under his singlet.

The learned District Judge acquitted the accused as he held (a) that there was no evidence to show where the aircraft came from and (b) that the prosecution had failed to establish a *prima facie* case that the accused had engaged in a conspiracy for the importation of gold into the Colony: this being the form of abetment alleged. The Deputy Public Prosecutor appealed.

Held: (1) it is common knowledge that the big international airlines do not operate internally and therefore in the absence of anything in the evidence suggesting

some abnormal circumstances, e.g. a forced landing up-country, there could be no reasonable doubt that the plane in this case flew into Singapore from outside local territorial waters; (2) having regard to all the circumstances there was evidence in this case to raise the *prima facie* inference that at some time before the gold was imported, the accused had become a party to the conspiracy for its illegal importation and therefore the learned District Judge should have called on the accused to enter for his defence.

[Editorial Note: The Control of Imports and Exports Ordinance, 1950, is now Chapter 214 of the Laws of the Colony of Singapore, Edition of 1955.]

Case referred to:—

(1) *R. v. Meyrick & Ribuffi* 21 Cr. App. R. 94.

CRIMINAL APPEAL from the District Court.

H. B. Livingstone (Crown Counsel) for the appellant.

L. Rayner for the respondent.

Whitton J. : — This is an appeal by the Deputy Public Prosecutor against a District Court order of acquittal of the respondent on a charge of abetting a person or persons unknown in the illegal importation into the Colony of six slabs of gold, in contravention of paragraph 2(1) of the Prohibition of Imports Order, 1950 read with section 27 of the Control of Imports and Exports Ordinance 1950.

The grounds of appeal are in effect two. Firstly, that the District Judge was wrong in holding that there was no evidence to show where the aircraft came from; secondly, that he was wrong in holding the Crown had failed to establish a *prima facie* case that the respondent had engaged in a conspiracy for the importation of gold into the Colony, this being the form of abetment alleged.

As to the first of these points the Crown produced two pieces of evidence, to wit, the testimony of two Customs Officers as to the arrival at Kallang Airport of the Pan-American Airways plane from which the District Judge was satisfied — quite justifiably in my view — that the respondent had removed the gold, and certain passenger and cargo manifests from which it might be inferred the plane had come from Manila. The District Judge eventually rejected these documents on the ground they had not been proved, and in so doing I think he was correct because, even if the documents had been made in the ordinary course of business within the meaning of section 32(ii) of the Evidence Ordinance, it had not been established that this was one of these cases in which such documents are rendered relevant under section 32. I consider, however, that the learned District Judge either failed to appreciate that it was immaterial whether the plane had come from Manila or from any other particular place once it had been proved it had come from

outside the territorial waters of the Colony as far as the question of importation was concerned, or else that he omitted to give due weight to the testimony of the Customs Officers to which I have referred. The plane was a Pan-American Airways aircraft. Mr. Boyce-Taylor, one of these Customs Officers, said he had kept it under observation and that he had seen mail taken from it. It is common knowledge that the big international airlines do not operate internally in Malaya. In the light of these factors and in the absence of anything in the evidence suggesting some abnormal circumstance, e.g. a forced landing upcountry, I do not think any reasonable doubt can be entertained that this plane flew into Singapore from outside local territorial waters. This evidence also excludes, I think, any possibility of the gold having been imported from the Federation, the Cocos or Keeling Islands, or Christmas Island, places to which the 1950 Order does not apply.

I now turn to the second part of the Appeal. This involves the issue whether the facts established by the Crown *prima facie* proved the respondent was a conspirator in the illegal importation of the gold. The first observation I would make in this connection is that I think it is clear there must have existed a conspiracy between one or more persons at the place the gold was put on the plane, or, alternatively some person travelling on the plane either as passenger or member of the crew, on the one hand, and one or more persons in Singapore who were to receive the gold on arrival. The only other possible theory does not seem to me at all tenable; that is an illegal importer on the plane trusting to luck came across the respondent and forthwith arranged with him to take charge of the gold.

The learned District Judge held there was no evidence the respondent had engaged with any other person or persons in any conspiracy for the importing of gold into the Colony. True there is no direct evidence, but as *Kenny* remarks (Outlines of Criminal Law 15th Ed. p. 340) "it rarely happens that the actual fact of the conspiracy can be proved by direct evidence; since such agreements are usually entered into both swiftly and secretly". Now it does not appear that to constitute a conspiracy it is essential a person must have been a party to the wrongful agreement from the start, provided that at some stage before the unlawful act is carried out he joins in the agreement to carry it out. Again it is clear that there need not be communication between each conspirer and every other, provided that there be a design common to them all (*R. v. Meyrick and Ribuffi*⁽¹⁾). So the issue, as I see it, resolves itself thus: having regard to all the circumstances does the evidence for the Crown raise

the *prima facie* inference that at some time before the gold was imported, i.e. carried inside territorial limits, the respondent had become a party to the conspiracy for its illegal importation, or is it also consistent with the respondent being a "stooge" who merely took over the gold on his principal's instructions? To my mind when due weight is given to such circumstances as (1) the nature of the respondent's employment at the Airport; (2) the value of the gold—in the region of \$80,000—being such that the illegal importers were very likely to make sure that it only passed into—from their point of view—trusted hands; (3) the preparedness of the respondent for receiving the slabs of gold as evidenced by the special waistcoat he was wearing under his singlet and his conduct just before he was apprehended, there were adequate grounds for the District Judge to hold there was a case to meet. In expressing this opinion I should make it clear that I have not overlooked the statement made by the respondent to the Customs Officials that he had had the gold since the Japanese Occupation, but I do not propose to comment upon it in view of the course I have decided to take.

The order of acquittal is set aside and I direct that the District Judge should proceed to call upon the respondent for his defence.

Order Accordingly.

V. DANIEL v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) March 16, 1956]

[K. L.—Criminal Appeal No. 5 of 1956]

Emergency (Rubber Control) Regulations, 1949—Charge of being found in unlawful possession of scrap rubber—Quantum of evidence to substantiate charge—Reasonable suspicion—Admissibility of documentary evidence—Evidence Ordinance, 1950, ss. 60, 159 and 160—Duty of prosecution to call witness.

The appellant was the manager of Lilford Estate, a rubber estate of over 195 acres of planted rubber; apart from 50 acres of newly planted rubber the estate consisted of old rubber trees. On November 2, 1955 a lorry driver was transporting 16½ bags of scrap rubber from a store in the New Village to Ban Lee Rubber Factory; the appellant was driving in his car in front of the lorry loaded with the scrap rubber. The lorry was stopped in the compound of Ban Lee Rubber Factory by an Inspector of Police and at that moment the appellant stated to the Inspector that the rubber was his. The lorry was then directed to the Police Station where the rubber was weighed. The Police Inspector produced the weigh bridge ticket (Ex. p2) which showed that the rubber on the lorry weighed 19 cwt. 7 lbs. The appellant produced to the Inspector his certificate of registration of Rubber cultivation for Lilford Estate (Ex. p. 3) and the lorry driver produced the lorry log book (Ex. p. 4). An expert witness gave evidence that it would not be possible for the rubber in question to be yielded by the estate by November 2, 1955 after the yield of